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No. 333

In the Supreme Court of the United States

OCTOBER TERM, 1953

STATE OF TENNESSEE, RAILROAD AND PUBLIC UTILITIES COMMISSION OF THE STATE OF TENNESSEE, AND HAMMOND FOWLER, JOHN C. HAMMER, AND CAYCE PENTECOST, AS MEMBERS OF AND CONSTITUTING THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF TENNESSEE, APPELLANTS

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL., APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE

REPLY OF INTERSTATE COMMERCE COMMISSION, APPELLEE, TO PETITION OF APPELLANTS FOR REHEARING

In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 393

STATE OF TENNESSEE, RAILROAD AND PUBLIC UTILITIES COMMISSION OF THE STATE OF TENNESSEE, AND HAMMOND FOWLER, JOHN C. HAMMER, AND CAYCE PENTECOST, AS MEMBERS OF AND CONSTITUTING THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF TENNESSEE, APPELLANTS

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL., APPELLEES

REPLY OF INTERSTATE COMMERCE COMMISSION, APPELLEE, TO PETITION OF APPELLANTS FOR REHEARING

The Interstate Commerce Commission, appellee, respectfully submits the following as its reply to appellants' petition for rehearing in the above-styled cause.

In their petition for rehearing appellants limit their attack to the Commission's findings with respect to the Tennessee intrastate rates on coal.

Appellants base their petition for rehearing on the following statement (pp. 1–2):

> * * * The Tennessee Valley Authority introduced substantial and uncontradicted evidence at the hearing before the Interstate Commerce Commission that the intrastate rates on coal were already higher than the interstate rates and were returning a greater margin above cost, but the Interstate Commerce Commission made no finding as to the relative levels of the interstate and intrastate rates.

It is respectfully submitted that the above statement is incorrect. The record clearly reveals that the evidence introduced by the Tennessee Valley Authority, at the hearing before the Commission, that the intrastate rates on coal "were already higher than the interstate rates and were returning a greater margin above cost," was not "substantial and uncontradicted." See Motion of the Interstate Commerce Commission to Affirm filed herein on October 8, 1953, pp. 9–10.

In considering the above contentions made by the Tennessee Valley Authority, the Commission made the following statement in its report, 286 I. C. C. 41, 54:

> In support of its contentions that intrastate coal rates in Tennessee are generally as high or higher than interstate coal rates, and that the going intrastate coal rates are more remunerative to the respondents than the interstate rates, the Tennessee Valley

> Authority relies upon computations based upon excerpts from the Carload Waybill Analyses, 1948, Statement No. 5032 and Statement No. 5028, issued in June 1950, by our Bureau of Transport Economics and Statistics. The computations were made by witnesses who could not give any of the shipping points covered by the statements or the transportation conditions or circumstances surrounding the movements or the establishment of the rates charged. The cost computations were also made in connection with excerpts from the waybill analyses statements. The traffic statistics included both intrastate and interstate movements. In the circumstances, the computations do not support conclusively these contentions. The evidence of record supports the conclusion that the respondents, after the decision of 1925 in the southern class rate investigation, adopted and have since followed the policy of maintaining intrastate rates throughout southern territory on the same relative level as interstate rates on practically all commodities. With respect to Tennessee, the exceptions are due to the action of the Tennessee commission in refusing to permit the intrastate rates on certain commodities to be increased to the full extent authorized in the interstate rates.

When considered in the light of the above-quoted statement of the Commission and the evidence in the case, it is submitted that there is no

basis for appellants' contention that the intrastate rates on coal were already higher than the interstate rates and were returning a greater margin above cost.

It is further submitted that in the light of the evidence of record and the statement of the Commission, above quoted, the Commission has found that the intrastate rates on coal were lower and produced less revenue than the interstate rates. See Motion of the Interstate Commerce Commission to Affirm filed herein on October 8, 1953.

Wherefore, for the foregoing reasons, it is respectfully submitted that appellants' petition for rehearing should be denied.

Respectfully submitted.

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